STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 91102-001**

v

Blue Cross Blue Shield of Michigan
Respondent
_____/

Issued and entered
This 1st day of October 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 21, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and accepted the request on July 28, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on August 11, 2008.

II
FACTUAL BACKGROUND

The Petitioner receives prescription drug benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Preferred RX Program Certificate* (the certificate). She has been using the brand-name drug Nexium since December 12, 2005. On December 14, 2007, BCBSM issued an alert regarding the prescribing of Nexium that encouraged its members to switch to a lower-cost

generic drug. Members were given 90 days from when they filled their Nexium prescription to switch to a covered alternative. Members who did not receive prior authorization from BCBSM to continue use of Nexium would be required to pay the full cost of the drug.

On April 23, 2008, BCBSM denied the Petitioner's request to authorize the use of Nexium. The Petitioner appealed BCBSM's denial through the internal grievance process. After a managerial-level conference on June 27, 2008, BCBSM did not change its decision and issued a final adverse determination on July 10, 2008.

III
ISSUE

Did BCBSM properly deny authorization for the Petitioner's Nexium prescription?

IV
ANALYSIS

Petitioner's Argument

The Petitioner understands that BCBSM is trying to save money by requiring its members to switch to generic medications. However, she believes there are differences in the make-up of the other medications and, while she has used them over the years, they do not work as well as Nexium.

The Petitioner says that even though a lot of her medical records have been lost, she has been to many doctors and tried many medications, including the experimental drug Xifaxan, and none of them worked. She says that many times she has had such severe chest pains and such trouble breathing from her acid reflux that the doctors in the emergency room thought she was having a heart attack. She is allergic to a large number of foods including wheat, eggs, peanuts, and sunflower seeds. Eating these foods produces severe stomach upset and Nexium is the only drug that works for her.

Nexium does not cure her stomach problems but the Petitioner says it does allow her to tolerate her suffering and somewhat function on a daily basis. She believes that Nexium is the only

drug that can control her gastroesophageal reflux disease and wants BCBSM to authorize her use of the brand-name drug.

BCBSM's Argument

BCBSM says the certificate clearly provides that if a prescription is filled with a nonpreferred co-branded drug, the patient will be responsible for the full cost of that drug unless the prescribing physician first requests and obtains authorization for the nonpreferred drug from BCBSM.

In the Petitioner's case, a new pharmacy initiative implemented by BCBSM effective July 1, 2007, changed the prescribing regimens for certain drugs including Nexium. Under this initiative, BCBSM members with Nexium prescriptions received a letter encouraging them to switch to an over-the-counter (OTC) medication or a covered alternative drug. Members were allowed to continue on Nexium for up to 90 days. Members who failed to get approval from BCBSM after that time would be responsible for the entire cost of their Nexium prescription.

Despite BCBSM's letter, the Petitioner and her doctor declined to change drugs. BCBSM says it contacted the Petitioner's doctor's office and determined there was no documentation that she had tried the suggested alternatives (Omeprazole or Prilosec OTC). Therefore, BCBSM believes it was justified in denying authorization for the Petitioner's Nexium.

Commissioner's Review

The certificate sets forth the benefits that are covered. In *Section 2: Prescription Drug Coverage* (page 2.2), the certificate states:

> - **Co-Branded Formulary Drugs**
>
> When a panel pharmacy fills a prescription for a co-branded drug, we will pay the pharmacy the approved amount for the preferred co-branded drug after deduction of your copayment.
>
> However, if the prescription is filled with a nonpreferred co-branded drug, you will be responsible for the full cost of the drug unless the prescribing physician requests and obtains authorization for the nonpreferred drug from BCBSM's Pharmacy Services Department. [Underlining added]
>
> .

The “Co-Branded Formulary Program” is defined on page 5.2 of the certificate as:

> A program in which co-branded drugs are designated “preferred” and “nonpreferred.” When dispensing brand name drugs that are co-branded, panel providers are required to fill a member’s prescription with the drug identified as preferred by BCBSM, unless the prescriber obtains preauthorization from BCBSM for the “nonpreferred” drug.

Nexium is a nonpreferred drug under the co-branded formulary program. BCBSM declined to authorize Nexium for the Petitioner on the basis that her need for it had not been established. The question of whether it was medically necessary for the Petitioner to use Nexium (instead of the preferred drugs Omeprazole or Prilosec) was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient’s Right to Independent Review Act. The IRO reviewer is a physician who is board certified in gastroenterology and has been in active practice for more than ten years.

The IRO reviewer concluded that Nexium is not medically necessary for treatment of the Petitioner’s condition. The reviewer determined that there is no reason to believe, based on the medical records submitted for review, that the Petitioner’s symptoms would worsen with a switch from Nexium to Omeprazole, one of the preferred drugs in the co-branded formulary program.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation,” MCL 550.1911(16) (b). The Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that Nexium is not medically necessary for treatment of the Petitioner’s condition and therefore BCBSM is not required to authorize its use.

V
ORDER

Respondent BCBSM's May 19, 2008, final adverse determination is upheld. BCBSM is not required to pre-authorize or cover the Petitioner's Nexium prescription.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.